

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division - - Felony Branch**

UNITED STATES	:	
	:	Criminal Case No.: 2007 CF1 ???
v.	:	Hon. F. W.
	:	Sentencing: April ??, 2009
G. D.	:	

MEMORANDUM IN AID OF SENTENCING

*I used to be that person
that would stand on the corner selling drugs
to try to keep up with the Joneses.*

*I used to be that person
that would do anything to survive
in that jungle out there called the streets*

*I used to be that person
that was going to end up dead
cause I didn't know any better*

*I used to be but know I am
That person that's willing to make a change
That person that has finally opened up his eyes
and seen that now I really have something to live for
That now I have another way out
and not having to be that used to be person*

*I used to be a boy but now I'm a man
A man with goals and a man that plans to live
and not to ever become that used to be person again.*

"I Used To Be But Now I Am" (G. D., 2/07)(appended hereto as Exhibit A). By his actions, and not merely his words, G. D. has proven himself to be someone not only "willing to make a change," but someone who has done so. He also has demonstrated that he has "opened up his eyes" and sees that he has "another way out." The most recent example of this is that Mr. D. earned his General Equivalency Diploma while incarcerated.

On April 24, 2009, the Court will sentence G. D. for his involvement as a lookout¹ in a shooting that occurred on January 6, 2007, when he was seventeen (17) years old. On January 26, 2009, Mr. D. entered a guilty plea before this Court to unarmed manslaughter, a plea offer he had sought from the inception of the case (but that was not extended to him by the government until the “eleventh hour”). Mr. D.’s plea to manslaughter was a resolution of the case that, as argued by undersigned counsel at the detention hearing on February 22, 2007, accurately reflected the events of January 6, 2007.² For these and other reasons set forth below, Mr. D. should be sentenced at the bottom of the applicable Sentencing Guidelines range.

How and why did G. D. come to be involved in the events of January 2007? What reason is there to think there will not be a reoccurrence? What sentence can be imposed to reduce as much as possible the risk of recidivism? What is a just and fair sentence for a remorseful youth who was not the trigger person but acted as a look out and who has demonstrated potential?

How and Why Mr. D. Came To Be Involved In The Offenses For Which He Will be Sentenced

As set forth in his appended autobiography and poetry, it is clear that family is extremely important to Mr. D.. His grandparents, and even the mother who was not much of a mother to him, figure prominently in his writings. This is significant, because it provides the backdrop for how, after the death of his grandparents, who were his “rock,” Mr. D. substituted friends who led him astray for the biological family he had lost.

¹See Factual Proffer In Support of Guilty Plea.

²At the detention hearing Detective March testified about the .9 mm weapon found near the decedent that was corroborated both by ballistics evidence showing that it had been fired, and by witnesses who said that the decedent fired before Mr. D. fired the single shot he did (that did not strike the decedent). Transcript of February 22, 2007, Detention Hearing at 16-19. D.C. Criminal Jury Instruction 4.18 (regarding “mitigating circumstances,” *i.e.*, that the decedent was armed and shot first, reducing the level of guilt to manslaughter). Likewise, the factual proffer in support of Mr. D.’s guilty plea states that the decedent had been chasing Koran Marshal, Ronald Watson and “Bee-Bop” and began to shoot at them.

As an adolescent, Mr. D. was “more vulnerable or susceptible to . . . outside pressures . . .” than an adult would have been. *Roper v. Simmons*, 543 U.S. 551, 569-570 (March 1, 2005), citing *Johnson v. Texas*, 509 U.S. 350, 367 (1993)³ Consistent with this recent recognition by the Supreme Court, it is ineluctable that, at seventeen years old, Mr. D.’s responses to the situations in which he found himself with “BeeBop” and the co-defendants played a role in his involvement in the offenses for which this Court will sentence him.

Classically for someone of his age in January 2007, as set forth in the factual proffer in support of Mr. D.’s guilty plea, although he initially resisted the entreaties of older persons to be involved in the events that resulted in the decedent’s death, ultimately, after continued efforts to convince him to participate, Mr. D. gave in.⁴

In addition, significantly, at the detention hearing on February ??, 2007, Detective D. M. testified that **the decedent** had a Smith and Wesson .9 millimeter weapon and that the ballistics evidence demonstrated that **he** had fired that gun. February ??, 2007 Transcript at 16-17. Indeed, the police had spoken to witnesses who indicated that it was **Mr. Harrison, the decedent, who had fired first**. February ??, 2007 Transcript at 17. Moreover, as later reports undersigned counsel reviewed showed and as Detective March testified, the ballistics evidence demonstrated that **Mr. D. did not fire the shot that struck and killed the decedent**, but rather that the decedent was struck and killed by a single federal F & C bullet. February ??, 2007 Transcript at 18-19. Indeed, **Mr. D. was never linked to any weapon that struck the decedent in this case on January 6, 2007.**

³See also *Eddings v. Oklahoma* 455 U.S. 104, 115-116 (1982) (“Even the normal 16 year old customarily lacks the maturity of an adult . . . [Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence . . .”).

⁴See Pre-Sentence Investigation Report at 11 (regarding Mr. D.’s “pleasing personality and wanting to be accepted in a non-confrontational environment” and ultimately being “persuaded to participate” in the instant offense).

February ??, 2007 Transcript at 19. All of these factual specifics about Mr. D.'s case augur in favor of a sentence at the bottom of the applicable guideline range.

**This Court Should Impose a Sentence At The Bottom Of the Applicable Guideline Range
Because There Are Reasons To Think There Mr. D. Will Not Be Engaged In Future
Criminal Behavior**

In this case various factors regarding Mr. D. himself also support sentencing him at the bottom of the applicable guideline range.⁵ Mr. D. has a potential recognized by virtually everyone who has had the privilege of meeting him⁶ and working with him. He has a potential undersigned counsel has hardly ever seen in the years she has been handling criminal cases. This potential as well as Mr. D.'s demonstrated introspection and keen powers of observation are indicative of a unique individual who is a fast learner, and does not need a lengthy period of incarceration to recompense for his wrongdoing and to "turn himself around."

At the time of the offenses, Mr. D. was seventeen (17) years old, and had a promising future. He was a star athlete at Spingarn playing both football and basketball. He had collegiate prospects and had been contacted by a collegiate scout, M. M. W. See Exhibit B (February 21, 2007 letter from M. W., president Recruit Collegiate Sports Scouting) (appended hereto). In addition to playing varsity basketball and varsity football at Spingarn, Mr. D. was taking Street Law there. In the attached letter from one of his Street Law teachers, a law student at Georgetown University Law Center, Mr. D. is described as an "intelligent and compassionate young man" whose "contributions were thoughtful and helped to push the entire class to achieve

⁵ *Yemson v. United States*, 764 A.2d 816, 819 (D.C. 2001) ("Judges are authorized to consider an individual's mental capacity, culpability, and other factors relevant to a young offender's ability to be held accountable for his actions, when determining a sentence."); *Powers v. United States*, 588 A.2d 1166, 1169 (D.C. 1991).

⁶ See e.g. Pre-Sentence Investigation Report at 10 (describing Mr. D. as "a mild-mannered and intelligent young man who has a friendly personality and good manners.")

a greater level of discourse.” See Exhibit C (April ??, 2007 Letter from L. M.) (appended hereto). Ms. M. further described Mr. D.:

G. was also a leader in maintaining a respectful learning environment. He demonstrated respect and compassion for his peers in the classroom [and] . . served as a protector to one student in particular, who was often chided for his quiet nature. This student had trouble participating in group activities and at times was excluded by other students who made fun of him for never speaking. This student was often harassed by other students asking him why he never spoke in class. G. made an active effort to include him and stand up for him . . .

Id.

Beyond the letter from his Street Law teacher, Ms. M., the appended letter from Mr. D.’s Coach at the D.C. Department of Parks and Recreation, W. F., Jr., who had known Mr. D. for seven years, reflects that Mr. D. is a respectful , “dependable and honest” person. As Mr. F. explains:

Mr. . . D. has been a role model for the youth working under the Department of Parks and Recreation as a Junior Camp Coach . . for seven consecutive years . . . Mr. D. is a hard-working self-starter who invariably understands exactly what a project for youth is all about from the outset and how to get it done quickly and effectively. During his seven years in the Recreation department as a Junior Camp Coach . . I cannot remember an instance in which he missed a major deadline. He often brought projects to enhance the ability that was age appropriate for each child. Mr. D. is a resourceful, creative, and solution-oriented person who was frequently able to come up with new and innovative approaches to his assigned projects. He functioned well as a Junior Coach when required, and he also worked effectively as a team member . . On the interpersonal side, Mr. D. has superior written and verbal communication skills. He gets along extremely well with staff under his supervision, as well as colleague at his own level. He is highly respected, as a person and as a professional, by colleagues, employees, suppliers, children and customers alike. When Mr. D.’s time was to end for employment for the summer, I informed him that I would recommend him for any position at D.C. Department of Parks and Recreation [and that] we were saddened to see him leave, although we wished him the greatest success in his accomplishments in the new school

year. Even now, after his departure, I can state that his presence, both as a person and as an exemplary employee, is still missed here . . .

Exhibit D (April ??, 2007 Letter from W. F., D.C. Department of Parks and Recreation) (appended hereto).

In his time at the jail, Mr. D. has acted upon his stated resolve to better himself and achieve his goals. He recently earned his General Equivalency Diploma, thereby making him eligible to pursue undergraduate collegiate studies after he is sentenced. Similarly, the Pre-Sentence Investigation Report writer described Mr. D. as “a mild-mannered and intelligent young man who has a friendly personality and good manners.” *See* Pre-Sentence Investigation Report at 10. These qualities suggest that a sentence at the bottom of the applicable guideline range will more than adequately address the four classic rationales of sentencing, *i.e.*, retribution, rehabilitation, deterrence, and incapacitation.

Until he turned eighteen, Mr. D. participated in the Free Minds Book Club & Writing Workshop at the jail. Ms. Kelli Taylor, Executive Director of Free Minds, described Mr. D. as “exceptional” and as someone who is “extremely curious and intelligent.” *See* Exhibit E (Kelli Taylor’s Letter to the Court dated April 16, 2009) (appended hereto). Ms. Taylor’s observations also bespeak Mr. D.’s potential and his desire to better his life.

The observations and characterizations of Mr. D., and the incredible equilibrium and serenity he exudes and has demonstrated throughout the over two years undersigned counsel has represented him bespeak a maturity that will stand Mr. D. in good stead. Mr. D.’s handling of his case and his meetings and discussions about it with undersigned counsel have always been reasonable and his analysis of the case has always revealed his keen mind. He has never been volatile or emotional.

Mr. D.'s demeanor is all the more remarkable given what is revealed in the appended autobiography he wrote as part of his participation in the Free Minds Book Club and Writing Workshop. Not only is the autobiography well-written, but it evidences Mr. D.'s ability to be introspective and to form emotional bonds and attachments to people, whether the families who were his neighbors, one of whom gave him a piano, or his grandparents, to whom he was deeply attached, and whose violent domestic arguments seemingly scarred Mr. D. deeply. In his poetry, as well as in discussions with undersigned counsel, a recurring theme for Mr. D. has been the importance of his grandparents, and the excruciating loss and anguish he felt when they died. He has repeatedly stated that he had promised them that he would finish school and continue on to college. Seemingly, in earning his General Equivalency diploma, he has made good on that promise to them. The fact, however, that Mr. D. is capable of deep emotional bonds is indicative of someone who is sentient and not beyond redemption.

What Is A Fair Sentence For A Remorseful Young Man Who Was Seventeen At The Time Of The Offense and Who Was Not The Principal?

Adolescence is relevant to the neuro-scientific legal notion of "culpability," as the scholars in the filed have defined that term. As explained by one scholar,

An offender's age has little bearing on the amount of harm caused. Culpability reflects the actor's ability to appreciate the wrongfulness of her actions and to control her behavior. Youthfulness and immaturity directly affects culpability and the seriousness of the crime. As *Roper* noted, youthfulness affects judgment, reasoning ability, and self-control and diminishes the criminal responsibility of juveniles who fail to exercise it. Although states may hold youth accountable, a youth sentencing policy also should recognize adolescents' diminished responsibility. Young offenders deserve less severe penalties than adults because of their diminished responsibility. Even youth who can distinguish right from wrong lack the moral capacity and self-control to equate their criminal responsibility with that of adults.

Barry C. Feld, *Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences*, 10 JOURNAL OF LAW AND FAMILY STUDIES at 45-47 (citations omitted).

Moreover, the transitory and malleable nature of adolescents like Mr. D. and that has been recognized by the Supreme Court in *Roper*, makes a sentence at the bottom of the applicable guideline range appropriate in Mr. D.'s case. See Ellen Marcus and Irene Marker Rosenberg, *After Roper v. Simmons: Keeping Kids Out of Adult Criminal Court*, 42 SAN DIEGO L. REV. 1151, 1180 (2005) ("If the child's brain is still growing until either twenty or twenty-five . . . , subjecting a child to adult punishment, . . . is irrational. We do not know who that child will be in five years or ten years. Just as teenagers' bodies change as they mature, so do their brains.") Even in the two years since the inception of the case Mr. D. has matured and changed.

Culpability has been explained as "the degree to which a defendant can be held accountable for his or her actions." Elizabeth Cauffman, Jennifer Woolard, N. Dickon Reppucci, "Justice for Juveniles: Perspectives on Adolescents' Competence and Culpability," 18 QLR 403, 415-416 (1999).

Culpability concerns the degree to which a defendant can be held accountable for his or her actions. In this context, immature judgment is considered as a possible mitigating circumstance which would render the defendant less blameworthy for transgressions committed. . . . [Y]ouths' offenses may stem in part from deficiencies in psychosocial factors that adversely affect judgment. If this is the case, then the presumptions of autonomy, free will and rational choice on which adult criminal responsibility is based become weaker . . . A legal response that holds youthful offenders accountable, while recognizing that they are less culpable than their [fully] adult counterparts, would provide criminal punishment without violating the underlying principle of proportionality, which suggests that punishment should be based, in part, on the blameworthiness of the offender.

Id.

Because the criminal law presumes free-willed moral actors -- those who morally can be blamed for wrong-doing -- it deems less

culpable those whose capacity to make rational choices or whose ability to exercise self-control is significantly constrained by external circumstances or individual impairments. Youthfulness affects the actor's abilities to reason instrumentally and freely choose behavior, and locates an offender closer to the diminished responsibility end of the continuum than to the fully autonomous free-willed actor.

Feld, *supra*, 32 HOFSTRA L. REV. at 500-501 (citations omitted). Modern wisdom about the human brain informs that, at age seventeen, necessarily Mr. D. was less a “fully autonomous free-willed actor” and more a youth whose impaired ability to reason affected his behavior. This factor should inform Mr. D.’s sentence in this case.

Outside the criminal justice context the limitations of youth are well-recognized and, indeed, reflected in the District of Columbia’s statutory provisions that implicitly recognize the inherent impulsivity of juveniles, their inability to consider fully the consequences of their actions, and the limitations in their judgment. For example, in the District of Columbia youth under eighteen are precluded from gambling,⁷ playing the lottery,⁸ serving on a jury,⁹ entering into a contract,¹⁰ or marrying (absent parental consent).¹¹ *See also* D.C. Code §25-1002(a) (prohibiting the purchase, possession or drinking of alcohol by anyone under the age of twenty-one). Likewise, car rental companies, that refuse to rent cars to persons under twenty-five years of age, and car insurance companies that have higher premiums for younger drivers, acknowledge the physiological differences in the brain of those who are sixteen-years of age, and older. *See* Exhibit G (All State Insurance 2007 “Why Do Most 16-year Olds Drive Like They’re

⁷*See* D.C. Code §3-1334

⁸ *See* D.C. Code §3-1335

⁹*See* D.C. Code §11-1906(b)(1)(C)

¹⁰*See* D.C. Code §28:1-103

¹¹*See* D.C. Code §46-411

Missing a Part of Their Brain?") (appended hereto). So, too, G. D.'s sentence in this case should reflect a corresponding judicial recognition of those physiological difference.

II. A Sentence At The Bottom Of The Applicable Guideline Range Will Address Any Concerns of Recidivism and Will Be Just and Fair for a Young Man Who Was The Youngest Member of a Group Involved In The Charged Incident, and Who Was Not the Trigger-Person Who Killed The Decedent

“All of the developmental characteristics that render adolescent offenders less culpable--impaired judgment and reasoning, limited impulse control, and susceptibility to peer influences--also reduce the likelihood that the threat of execution or draconian sentences will have any appreciable deterrent effect on younger offenders decisions to commit crimes.” Feld, *supra* 32 HOFSTRA L. REV at 521. *See also Roper* 542 U.S. at 571-572 (“the absence of evidence of deterrent effect is of special concern because the same characteristics that render juveniles less culpable than adults suggest as well that juvenile will be less susceptible to deterrence.”)

A sentence at the bottom of the applicable guideline range will more than adequately address any concerns of recidivism. In *Roper* the Supreme Court explained:

The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, “[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside.” *Johnson[v. Texas]*, 509 U.S. 350,]368 (1993); *see also* Steinberg & Scott [*Less Guilty By Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009,]1014 [(2003)] (“For most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal

activities develop entrenched patterns of problem behavior that persist into adulthood”).

543 U.S. at 570. In short, even before considering his demonstrated resolve to avoid future criminal involvement, by virtue of his age, alone, Mr. D. is likely to “age out” of any future illegal behavior.¹²

¹²The United States Supreme Court’s recognition about the malleability of the adolescent brain clearly indicates that lengthy sentences are contra-indicated for youth like Mr. D.. In *Roper v. Simmons*, *supra*, the Supreme Court recognized three features which the Court said “demonstrate[d] that juvenile offenders cannot with reliability be classified among the worst offenders:

First, as any parent knows and as the scientific and sociological studies . . . tend to confirm, . . . [a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions. . . . *Johnson* [*v. Texas*, 509 U.S. 350,] 367 [(1993)]; *see also Eddings* [*v. Oklahoma*, 455 U.S. 104], 115-116 [(1982)] (“Even the normal 16-year-old customarily lacks the maturity of an adult”). It has been noted that “adolescents are overrepresented statistically in virtually every category of reckless behavior.” Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REVIEW 339 (1992). In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.

The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. *Eddings*, *supra*, at 115 (“[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage”). This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. *See Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003) (hereinafter Steinberg & Scott) (“[A]s legal minors, lack the freedom that adults have to extricate themselves from a criminogenic setting”).

The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. *See generally* E. Erikson, *IDENTITY: YOUTH AND CRISIS* (1968).

These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means “**their irresponsible conduct is not as morally reprehensible as that of an adult**”. *Thompson* [*v. Oklahoma*, 487 U.S. 815,] 835 [(1988)] (plurality opinion). **Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for**

A recent study published by the Center for Disease Control found that adult sentences for youth who have been prosecuted as adults actually increases, rather than decreases, recidivism. *See Effect of Violence of Laws and Policies Facilitating the Transfer of Juveniles From The Juvenile Justice System To The Adult Justice System : A Systematic Review*, AM. J. PREV. MED 2007: 32 S 15 (“On the basis of strong evidence that juveniles transferred to the adult justice system have greater rates of subsequent violence than juveniles retained in the juvenile justice system, the Task Force on Community Preventive Services concludes that strengthened transfer policies are harmful to those juveniles who experience transfer. Transferring juveniles to the adult justice system is counterproductive as a strategy for deterring subsequent violence.”) (April 2007) (available at www.ajpm-online.net) (also available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>). *See also New York Times*, “Juvenile Injustice” (May 11, 2007), Page A-22 (The United States made a disastrous miscalculation when it started automatically trying youthful offenders as adults instead of handling them through the juvenile courts. Prosecutors argued that the policy would get violent predators off the streets and deter further crime. But **a new federally backed study shows that**

failing to escape negative influences in their whole environment. *See Stanford [v. Kentucky 492 U.S. 361], 395 [(1989)]* (Brennan, J., dissenting).

Roper, 543 U.S. at 569-570 (emphasis supplied). Although *Roper* was decided in the context of the constitutionality of the death penalty for juvenile offenders, its rationale is equally applicable outside the context of capital punishment and to persons like Mr. D. who were seventeen at the time of the offense. *See generally* Lisa McNaughton, *Extending Roper's Reasoning To Minnesota's Juvenile Justice System*, 32 WM. MITCHELL L. REV. 1063, 1067-1068 (“*Roper's* rationale should be applied to any situation in which juveniles are subjected to harsh punishments that are disproportionate to the juveniles’ level of culpability.”) (2006); Timothy Cone, “*Developing The Eighth Amendment for Those ‘Least Deserving’ Of Punishment: Statutory Mandatory Minimums for Non-Capital Offenses Can be ‘Cruel and Unusual’ When Imposed on Mentally Retarded Offenders,*” 34 N.M.L. REV. 35, 37-41 (2004).

juveniles who do time as adults later commit more violent crime than those who are handled through the juvenile courts.”) (emphasis supplied).¹³

A sentence at the bottom of the applicable guideline range is just and fair for a young man who was seventeen at the time of the offense, who was not the person who caused the decedent’s death and who has demonstrated potential. As Professor Feld explains:

Criminal responsibility and moral blameworthiness hinge on cognitive and volitional competence. In a framework of deserved punishment, it is unjust to impose the same penalty on offenders who do not possess comparable culpability. Younger offenders are not as blameworthy as adults because they have not yet fully internalized moral norms, developed sufficient empathic identification with others, acquired adequate moral comprehension, or had sufficient opportunity to learn to control their actions. In short, they possess neither the rationality--cognitive capacity--nor the self-control--volitional capacity--to justify equating their criminal responsibility with that of adults.

Feld, *supra*, 32 HOFSTRA L.REV at 502 (citations omitted).¹⁴

Shorter sentences recognize that young offenders' choices differ qualitatively from those of adults and enable them to survive their serious mistakes with a semblance of life chances intact. They also recognize that the same-length sentences impose a greater "penal bite" on younger offenders than they do on their older counterparts. A formal mitigation of punishment based on youthfulness avoids inflicting disproportionately harsh penalties on less culpable offenders without excusing their criminal conduct. Youthfulness constitutes a categorical form of diminished responsibility because young people as

¹³Last year the Department of Justice itself, of which the United States Attorney’s Office is a part, disseminated a report acknowledging the fallacious reasoning underlying the wholesale prosecution of persons of Mr. D.’s age as adults. See Richard Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (August 2008), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>

¹⁴See also *id.* at 543 (Penal proportionality dictates shorter sentences for youth because of diminished responsibility. While criminal law presumes autonomous choices by free-willed actors, adolescents have not yet acquired experience, self-control, and maturity of judgment to validate such a presumption. Even if a youth is criminally responsible for causing a particular harm, the law should not treat her choices as the moral equivalents of an adult’s and impose the same sentence. Political sound-bites--"Adult crime, adult time," or "Old enough to do the crime, old enough to do the time"--provide simplistic answers to complex moral and legal questions.)

a group make choices that differ qualitatively from those of adults. . . . The research evidence is strongest that the maturity of judgment and adjudicative competence of the youngest adolescents is qualitatively lower than that of typical adult offenders. . . .

Id. at 551-552. *See also* Feld, *supra*, 10 JOURNAL OF LAW AND FAMILY STUDIES at 71 (“The principle of ‘youthfulness as a mitigating factor’ . . . acknowledges adolescents’ reduced culpability without excusing their criminal conduct. It holds adolescents accountable yet imposes sentences proportional to their diminished responsibility.”)

The extent to which Mr. D. is “culpable,” is based upon “several interrelated phenomena, including responsibility, accountability, blameworthiness, and punishability.” Laurence Steinberg, Elizabeth Cauffman *supra*, 6 VA. J. SOC. POL’Y & L. at 404-405. Beyond the “cognitive and social-cognitive capabilities that are potentially relevant to the assessment of blameworthiness, . . . [are] . . . also . . . certain capabilities that are more interpersonal or emotional than cognitive in nature. *Id.* at 407. These “psychosocial capabilities include “the ability to manage one’s impulses, to manage one’s behavior in the face of pressure from others to violate the law, or to extricate oneself from a potentially problematic situation.” *Id.* In these respects, by virtue of his age on January 6, 2007, Mr. D. was impaired in that his capacity to extricate himself from a problematic situation and to stand up against peer pressure to go along with the crowd was compromised as were his impulses. Accordingly, his “blameworthiness” is reduced to some extent, which should bear upon an appropriate sentence in this case. Viewed through this prism, and using the parlance of the neuro-scientific legal scholars, Mr. D.’s “culpability” or “blameworthiness” is mitigated because his “[i]mmature judgment, impulsiveness, and lack of self-control [were] normal developmental characteristics of adolescents that reduce [his] criminal responsibility.” Feld, *supra*, 10 JOURNAL OF LAW AND

FAMILY STUDIES at 72-73 (citations omitted).

WHEREFORE, for the foregoing reasons, and such others as may appear to the Court, G. D., through undersigned counsel, respectfully requests that this Court impose concurrent sentences in this case at the bottom of the applicable guideline range.

Dated: April ??, 2009

Respectfully submitted,

Santha Sonenberg (D.C. Bar No. 376-188)
Public Defender Service
On Behalf of G. D.
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum In Aid of Sentencing has been delivered by hand on this ____ day of April 2009, to S. R., Assistant United States Attorney, 555 Fourth Street, N.W., Washington, D.C. 20530.

Santha Sonenberg

United States v. G. D.
Criminal No. 2008 CF1 ???

Exhibits Appended to Memorandum In Aid of Sentencing

Exhibit	Description of Document
A	Poetry and Writings By G. D. <ul style="list-style-type: none">•The Autobiography of G. D.•My Wings•I Was, But Now•Mommy•Soldiers Dream•Voices of Truth•Scared•It Wasn't A Dream•Why Turns Into What Everyday•I Used To Be But Now I Am•Momma Don't Worry
B	Letter from M. W., president Recruit Collegiate Sports Scouting (February ??, 2007)
C	Letter from L. M. (April ??, 2007)
D	Letter from W. F., D.C. Department of Parks and Recreation (April 25, 2007)
E	Letter from Kelli Taylor, Executive Director, Free Minds Book Club and Writing Workshop (April 16, 2009)
F	<i>Adolescent Brains Show Lower Activity In Areas That Control Risky Choices</i> (National Institute of Mental Health, 2007)
G	All State Insurance 2007 "Why Do Most 16-year Olds Drive Like They're <i>Missing a Part of Their Brain?</i> "

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March 15, 2007

Adolescent Brains Show Lower Activity in Areas That Control Risky Choices

A new NIMH study could help explain why adolescents are so prone to make risky choices. When contemplating risky decisions, they show less activity in regions of the brain that regulate processes involved in decision-making, compared with adults. The areas are among the last to develop and are involved in control of "thinking" functions, including decision-making, and in processing reward-related input and behavior (the orbitofrontal/ventrolateral prefrontal cortex and dorsal anterior cingulate cortex).

Results of the study were reported in the March 9 issue of *Neuropsychologia* by Monique Ernst, MD, Ph.D., and colleagues from the NIMH Emotional Development and Affective Neuroscience Branch.

The study, which included data on 16 adolescents and 14 adults, involved a game of chance. At each turn, they could choose a high-risk or low-risk option to try to win. The high-risk option offered greater reward than the low-risk option, but the chance of winning was much lower. Scientists measured brain activity while the participants made their choices, using technology called functional magnetic resonance imaging.

The results suggest that when it comes to making choices involving risk, adolescents do not engage the higher-thinking, decision-and-reward areas of the brain as much as adults do.

Brain development continues throughout adolescence, and the reduced activity seen in specific areas in the healthy adolescents in this study appears to be normal. Studies like this one are helping researchers map normal maturation in the brain, data that can then be used for comparison in studies of mental illnesses — some of which begin during adolescence, including depression and anxiety disorders.

Reference

Eshel N, Nelson EE, Blair J, Pine DS, Ernst M. Neural substrates of choice selection in adults and adolescents: development of the ventrolateral prefrontal and anterior cingulate cortices. *Neuropsychologia*, online Jan. 23, 2007; in print March 9, 2007.

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